

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

V

GENESIS HEALTHCARE

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid vacation time and personal days

Employer: Genesis Healthcare, 101 East State St., Kennett Square, PA 19348

Date of Hearing: August 5, 2014

Case No. 48006

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on April 28, 2014. The notice was sent to the employer and there was an objection. The objection was sent to the claimant and there was a request for a hearing. The Notice of Hearing was sent to both parties on July 3, 2014.

The claimant testified that she worked for the employer for thirteen years in the Nursing Department. She was an hourly employee working under the "Baylor Plan" for nurses. The employer notified the employees that they were going to discontinue the "Baylor Plan" and go with a standard work week for nursing.

The claimant gave a written notice of resignation with a two week notice period. The claimant felt that the employer just changed the system to try and get rid of certain employees. The claimant used the term "constructive termination". The claimant feels that by changing the coverage shifts she had no alternative but to resign.

The claimant said that the personnel handbook did not allow for a payout of leave based on a resignation. However she considered the constructive termination as a form of lay-off which was covered by the pay out provision. The claimant felt that her resignation was not a standard resignation and so she was due 59 hours of vacation time and 16 hours of personal time. The Wage Claim was filed for \$1,639.50.

The employer testified that the change in scheduling that led to the demise of the “Baylor Plan” was a management prerogative. They gave the employees ample notice of the change. The claimant chose to resign her position with the employer. The personnel policy on the pay out of accrued time is very clear. The claimant did not fall under any of the categories that call for a pay out of accrued leave.

FINDINGS OF FACT

RSA 275:43 I. Every employer shall pay all wages due to employees within 8 days including Sunday after expiration of the week in which the work is performed, except when permitted to pay wages less frequently as authorized by the commissioner pursuant to paragraph II, on regular paydays designated in advance by the employer and at no cost to the employee.

803.01 (a). Pursuant to RSA 275:43, I and II, every employer shall pay all wages due to his/her employees within 8 days, including Sundays, after the expiration of the workweek on regular paydays designated in advance. Biweekly payments of wages shall meet the foregoing requirement if the last day of the second week falls on the day immediately preceding the day of payment. Payment in advance and in full of the work period, even though less frequently than biweekly, also meets the foregoing requirement.

This is the section of the law that mandates an employer to pay an employee all wages due at the time the wages are due and owing.

RSA 275:43 V. Vacation pay, severance pay, personal days, holiday pay, sick pay, and payment of employee expenses, when such benefits are a matter of employment practice or policy, or both, shall be considered wages pursuant to RSA 275:42, III, when due.

This part of the law places an issue such as accrued time under the category of wages when the time is due and owing.

It is the finding of the Hearing Officer, based on the written submissions and the testimony presented at the hearing, that the Wage Claim is invalid. The claimant has the burden to show that there are wages due and owing and she did not meet this burden.

The claimant knew she worked under established policies on the pay out of accrued time. She brought in the term “constructive termination” and tried to have it fit under an umbrella of a lay-off.

The employer asked for a dismissal of the Wage Claim because the policy was in place and known to the claimant. The employer also pointed out that the claimant submitted a voluntary written resignation.

DECISION AND ORDER

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as RSA 275:43 V considers vacation pay to be wages, when due, if a matter of employment practice or policy, or both, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that sBased on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as this Department finds the claimant failed to prove by a preponderance of the evidence that he was not paid all wages due, it is hereby ruled that the Wage Claim is invalid.

Thomas F. Hardiman
Hearing Officer

Date of Decision: August 26, 2014

Original: [REDACTED]
cc: Genesis Healthcare

TFH/klt